In the High Court of Punjab and Haryana at Chandigarh.

Date of decision: 6.9.2007

Baj Singh ... Petitioner

Versus

Ninder Singh ...Respondent.

Present: Mr.BR Mahajan, Advocate, for the petitoner.

Mr.Manish Prabhakar, Advocate, for the respodnent.

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PERMOD KOHLI, J. (Oral):

This revision is directed against the order dated 25.10.2005 passed by the learned Additional Civil Judge (Senior Division), Patti, in execution case No.29 of 1999.

It is the admitted case of the parties that a decree for money was passed against the present petitioner and in favour of the respondent by the learned Additional Civil Judge (Senior Division), Patti. The decree having attained finality, an execution petition was filed. During the

pendency of the execution petition, the Judgment Debtor filed an application on 05.06.2002, claiming that the decretal amount has been paid to the Decree Holder out side the Court against a proper receipt. A receipt dated 3.5.2002 was also placed on record. The Decree Holder was put to notice of this application, who denied the execution of the receipt outside the Court. He also pleaded that his thumb impressions were obtained under the influence of liquor, whereupon the receipt was prepared. The executing Court framed the following issues on 22.03.2003:-

(1) Whether Decree Holder has received Rs.90,527.75 P. vide receipt 3.5.2002 and the execution stands fully satisfied? OPJD

(2) Whether the receipt dated 3.5.2002 is forged and frivolous document? OPDH

(3) Relief.

On consideration of issue Nos.1 and 2, the executing Court came to the conclusion that no payment was ever made by the Judgment

Debtor to the Decree Holder and the alleged receipt is without consideration. It is further opined that the receipt dated 3.5.2002 was got prepared by the Judgment Debtor on blank papers having thumb impression of the Decree Holder. The executing Court further held that during the pendency of the execution petition, any payment made to the Decree Holder outside the Court, cannot be recognised in absence of same being recorded under Rule 2 of Order 21 of the Code of Civil Procedure. To arrive at this conclusion, the executing Court relied upon a judgment of the Hon'ble Apex Court in Badamo Devi & Ors. Versus Sagar Sharma, 2000 (1) CCC, 1 (SC) and Manuraj Chandrakant Babar Vs. Bapusaheb Babasaheb Deshmukh, A.I.R. 1995, Bombay, 41. The executing Court also relied upon some judgments of the High Court of Punjab and Haryana and Kerala. It has also been observed that there was no occasion for the Judgment Debtor to have paid the decretal amount outside the Court three days before the date fixed in the case. On account of various circumstances noticed by the executing Court, the application of the petitioner-Judgment Debtor has been dismissed.

I have heard the learned counsel for the parties at length.

Learned counsel for the petitioner submits that the learned executing Court should not have ignored the written receipt. This is a finding of fact recorded by the executing Court. From the order impugned, it appears that the findings cannot be said to be perverse. Even if two views are possible from the evidence/material on record and the executing Court or trial Court has accepted one view, no interference is called for by this Court in revisional jurisdiction under Article 226 of the Constitution of India. I do not find any infirmity or perversity in the impugned order. No merit. Dismissed.

September 06, 2007. (PERMOD KOHLI)
BLS JUDGE